
Senate Bill 848

Date: March 17, 2021
Committee: Finance Committee
Bill Title: Maryland Wage and Hour Law and Maryland Wage Payment and Collection Law
- Revisions (Maryland Wage Protection Act)
Re: Letter of Information

SB848 makes substantial changes to multiple sections of the wages and hours & wage payment and collection laws. The changes are significant and will result in many Maryland small businesses being in violation of the law and subject to potential civil penalties, remedies, and even criminal enforcement provisions. Three of the provisions will be particularly impactful and create significant hardship on employers.

This bill broadly expands authority of the Commissioner of Labor and Industry (Commissioner) to investigate an employer under Subtitles 4 & 5. Under this bill the Commissioner is free to conduct a general investigation instead of the existing limitation of investigating whether a violation has occurred. This bill also eliminates the requirement of a written complaint of an employee to conduct an investigation under subtitle 5 to add or "on the Commissioner's own initiative".

The bill changes the definition of an “independent contractor” to the test used in LE § 8-205. LE 8-205 is the definition of an “independent contractor” for purposes of the unemployment insurance law. It is commonly referred to as the “ABC” test.” This is a different standard than Employment Standards Service (ESS) has used in the past. Historically, ESS has used the common law test (also known as the “Economic Realities Test”) as set forth in *Baltimore Harbor Charters v. Ayd*, 134 Md. App. 188 (2000), in analyzing whether a worker is an employee or an independent contractor, the same standard used by the Comptroller and the IRS. It is possible for a worker to be an employee for purposes of the ABC test but not the common law test. This could create difficulties and confusion for employers if ESS uses a different standard than the Comptroller and the IRS.

This bill makes substantial changes to “pay stub” requirements. The provisions of this bill add 8 line items that a pay stub must reflect; adds line items for certain allowances; requires certain employer information. The bill requires employers must provide the information within 30 days of initial employment and for each pay period thereafter. Changing a pay stub requires reprogramming the software used by the employer. Many employers use nationally common payroll systems and custom reprogramming for Maryland law changes will take significant time and potentially large expense. The changes to the minimum wage law in 2019 required changes to the pay stub for restaurant employers and the Department has been working with payroll

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companies for over 9 months to develop regulations that implement the law's changes. It can be assumed that the changes required in this bill will be more complex.

This bill expands the scope of what may be considered a criminal violation to include most of LE § 3-428 and provides that criminal enforcement provisions include civil penalties and remedies provided in LE § 3-428. Some violations of this section could be unintentional, and subjecting the employer to potentially criminal charges has a significant impact on small businesses who may not have the benefit of legal counsel or sophisticated payroll software.

The Department respectfully requests that the Committee consider this information.